

GENERAL GOVERNMENT CABINET
Personnel Board
(Amendment)

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075(1), 18A.0751(1), (4)~~[-18A.115(4)]~~

STATUTORY AUTHORITY: KRS 18A.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1) and (4) require the Personnel Board to promulgate administrative regulations for the classified service governing demotion, transfer, reinstatement, ~~[reemployment,]~~ and discipline. ~~[KRS 18A.115(4) establishes requirements governing the promotion of a career employee to a position exempted from classified service.]~~ This administrative regulation establishes the method for determining an employee's work station, the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written reprimands.

Section 1. ~~[Definition. "Class series" means a group of positions that are similar as to the duties performed and have:~~

~~(1) Varying levels of:~~

~~(a) Discretion;~~

~~(b) Responsibility; and~~

~~(c) Minimum requirements of training, experience, or skill; and~~

~~(2) Schedules of compensation that are commensurate with minimum requirements.~~

~~Section 2.]~~ Work Station.

(1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.

(3) Except as provided by Sections 2, 3, and 4~~[-and 5]~~ of this administrative regulation, an appointing authority may assign an employee to work at a site other than his or her current work station if the:

(a) Site is within the employee's county of employment; and

(b) Assignment is not a transfer, demotion, or reinstatement.

Section 2.~~[Section 3.]~~ Demotion. (1) A demotion for cause shall be intra-agency.

(2) Voluntary demotion.

(a) A voluntary demotion shall be made if an employee with status requests a voluntary demotion on the Voluntary Transfer/ Demotion/ Promotion Employee [Salary Retention] Agreement Form incorporated by reference ~~[prescribed]~~ by the Personnel Cabinet in 101 KAR 2:034.

(b) The form shall include:

1. ~~[A statement of the reason for the request;~~

2.] The effective date of the demotion;

2.[3.] The position from which the employee requests demotion;

3.[4.] The position to which the employee will be demoted;

4. The pay grade, salary, and work week for the position to which the employee will be demoted; and

5. A statement that the employee waives the right to appeal the demotion.

(c) The agency shall forward a copy of the form ~~[request]~~ to the Personnel Cabinet Secretary ~~[of Personnel]~~.

(3) A voluntary demotion shall be interagency or intra-agency.

Section 3.~~[Section 4.]~~ Transfers. (1) The transfer of an employee with status shall conform to the requirements established in this section.

(2)(a) A transfer shall be on a voluntary or involuntary basis.

(b) An appointing authority shall establish cause ~~[a reasonable basis]~~ for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall:

1. Indicate that the employee:

a. Has been selected for transfer; and

b. Is required to report to the new work station; and

2. State the:

a. New work station;

b. Reason for the transfer;

c. Effective date of the transfer; and

d. Right of the employee to appeal the transfer to the board within sixty (60) calendar days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Personnel Cabinet Secretary ~~[of Personnel]~~.

(d) An employee shall report to the new work station upon the date specified in the notice.

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

(a) An employee shall be entitled to travel ~~[and moving]~~ expenses as provided by 200 KAR 2:006;

(b) An employee shall receive a written notice of involuntary transfer at least thirty (30) calendar days prior to the effective date of the transfer;

(c) The notice shall contain:

1. The information specified in subsection (3)(b) of this section; and

2. A statement that the employee is entitled to[:

a.] reimbursement of travel expenses incurred ~~[within]~~ thirty (30) calendar days following ~~[of]~~ the effective date of the transfer ~~[notice; and~~

b. ~~Moving expenses, if any].~~

(5) An involuntary transfer shall be intra-agency.

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer/ Demotion/ Promotion Employee ~~[Salary Retention]~~ Agreement Form incorporated by reference ~~[prescribed]~~ by the Personnel Cabinet in 101 KAR 2:034.

(b) The form shall include:

1. ~~[A statement of the reason for the request;~~

2.] The effective date of the transfer;

2.[3.] The position number and job classification [~~including identifying number,~~] from which the employee requests a transfer;

3.[4.] The position number and job classification [~~including identifying number,~~] to which the employee requests a transfer;

4. The pay grade, salary, and work week for the position to which the employee will be transferred; and

5. A statement that the employee waives the right to appeal the transfer.

(c) The agency shall forward a copy of the form [~~request~~] to the Personnel Cabinet Secretary [~~of Personnel~~].

(7) A voluntary transfer shall be interagency or intra-agency.

Section 4.[Section 5.] Reinstatement. (1) A request for reinstatement shall be submitted by the appointing authority to the Personnel Cabinet Secretary [~~of Personnel~~].

(2) The request shall include a finding that the candidate for reinstatement:

(a) Meets the current qualifications for the job classification to which the employee is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If the reinstatement is to a job classification outside of the job classification [~~series~~] where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.

(4) The request for reinstatement shall contain a copy of the board's order ordering reinstatement, if applicable.

Section 5.[Section 6.] Written Reprimand. (1) An employee or former employee may petition the Personnel Cabinet Secretary for removal of a written reprimand and all related documentation from the employee's official personnel file after a period of three (3) years from the date of the written reprimand.

(a) An employee's request shall not be granted if the employee has received any disciplinary action or written reprimand in the three (3) years prior to the request for removal.

(b) A petition for removal shall:

1. Be made by the employee, and be dated and signed; and

2. Include the following information:

a. The employee's current position number, job classification, agency, work phone number, and work address;

b. The employee's immediate supervisor at the time of the petition for removal;

c. The date the written reprimand was issued;

d. A statement by the employee that the employee has not received any disciplinary actions or written reprimands in the three (3) years prior to the petition; and

e. A statement that the information contained in the petition is correct and complete to the best of the employee's knowledge, and that the employee has provided notification [~~a copy~~] of the petition to the employee's current appointing authority.

(c) The petition for removal shall be mailed by first-class mail, [~~or~~] hand-delivered to the office of the Personnel Cabinet Secretary, or submitted electronically as permitted by the Personnel Cabinet Secretary.

(2) A petition for removal of a written reprimand shall be subject to the approval of the Personnel Cabinet Secretary.

(a) The Personnel Cabinet Secretary shall approve or deny the petition for removal within thirty (30) calendar days of receipt of the petition.

(b) If the petition is denied, the Personnel Cabinet Secretary shall notify the employee in writing and provide justification for denial. The decision by the secretary with respect to the petition shall be final and not appealable to the Personnel Board.

(c) If the petition is approved, the Personnel Cabinet Secretary shall notify the employee and the appointing authority of the employee's agency in writing of the approval.

(3) Upon removal from an employee's official personnel file maintained by the Personnel Cabinet, a written reprimand shall be handled as established in this subsection.

(a) The written reprimand shall be delivered to the Office of Legal Services and remain in the custody and care of the Office of Legal Services.

(b) The Office of Legal Services shall maintain the written reprimand [document] as confidential work-product materials for the availability or use in any future legal proceeding.

(c) If no legal proceeding involving the employee's personnel file has been filed within five (5) years of receipt, the written reprimand shall be permanently destroyed.

(d) Upon removal from the official personnel file, but prior to destruction, a written reprimand shall not be considered as part of any personnel action.

(e) The employing agency shall be notified by the Personnel Cabinet of the removal of a written reprimand from an employee's official personnel file.[]

~~Section 7. Incorporation by Reference. (1) "Voluntary Transfer/Demotion/ Salary Retention Agreement Form", March 2011, Personnel Cabinet, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, State Office Building 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

MARK A. SIPEK, Executive Director, Personnel Board

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the method for determining an employee's work station, the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written reprimands.

(b) The necessity of this administrative regulation: This regulation is necessary to adopt requirements and procedures of any actions taken or requested involving classified employees work station, demotion, transfer, reinstatement and written reprimands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.078(1) and (4) requires the Board to promulgate administrative regulations for the classified service governing employee actions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to process classified employee actions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies time and method requirements for filing, releases the incorporation of the Voluntary Transfer/Demotion/Promotion Employee Agreement Form from this regulation as it is a Personnel Cabinet form properly incorporated in 101 KAR 2:034, and corrects various syntax and grammar errors.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide uniform employee actions across all state agencies.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is required by KRS 18A.075 to administer regulations for the classified service employees governing demotion, transfer, reinstatement, and discipline.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistency for effective administration of the procedures governing employee actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies with classified employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will not be any new actions required of the entities identified in question (3) to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continued compliance of this regulation will provide uniformity to the classified employee actions.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or a necessity in funding to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Personnel Board, Personnel Cabinet, and all other state government agencies with classified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, 18A.075(1) (4), 18A.005 to 18A.200.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are no estimated costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.